

AMENDMENTS TO LB 152

Introduced by Business and Labor

1 1. Strike the original sections and insert the following
2 sections:

3 Section 1. Section 48-120, Reissue Revised Statutes of
4 Nebraska, is amended to read:

5 48-120 (1)(a) The employer is liable for all reasonable
6 medical, surgical, and hospital services, including plastic surgery
7 or reconstructive surgery but not cosmetic surgery when the injury
8 has caused disfigurement, appliances, supplies, prosthetic devices,
9 and medicines as and when needed, which are required by the nature
10 of the injury and which will relieve pain or promote and hasten
11 the employee's restoration to health and employment, and includes
12 damage to or destruction of artificial members, dental appliances,
13 teeth, hearing instruments, and eyeglasses, but, in the case of
14 dental appliances, hearing instruments, or eyeglasses, only if such
15 damage or destruction resulted from an accident which also caused
16 personal injury entitling the employee to compensation therefor for
17 disability or treatment, subject to the approval of and regulation
18 by the Nebraska Workers' Compensation Court, not to exceed the
19 regular charge made for such service in similar cases.

20 (b) Except as provided in section 48-120.04, the
21 compensation court shall establish schedules of fees for such
22 services. The compensation court shall review such schedules at
23 least biennially and adopt appropriate changes when necessary. The

1 compensation court may contract with any person, firm, corporation,
2 organization, or government agency to secure adequate data to
3 establish such fees. The compensation court shall publish and
4 furnish to the public the fee schedules established pursuant to
5 this subdivision and section 48-120.04. The compensation court may
6 establish and charge a fee to recover the cost of published fee
7 schedules.

8 (c) Reimbursement for inpatient hospital services
9 provided by hospitals located in or within fifteen miles of a
10 Nebraska city of the metropolitan class or primary class and by
11 other hospitals with fifty-one or more licensed beds shall be
12 according to the Diagnostic Related Group inpatient hospital fee
13 schedule or the Trauma Diagnostic Related Group inpatient hospital
14 fee schedule established in section 48-120.04.

15 (d) A workers' compensation insurer, risk management
16 pool, self-insured employer, or managed care plan certified
17 pursuant to section 48-120.02 may contract with a provider or
18 provider network for medical, surgical, or hospital services. Such
19 contract may establish fees for services different than the fee
20 schedules established under subdivision (1)(b) of this section or
21 established under section 48-120.04. Such contract shall be in
22 writing and mutually agreed upon prior to the date services are
23 provided.

24 (e) The provider or supplier of such services shall
25 not collect or attempt to collect from any employer, insurer,
26 government, or injured employee or dependent or the estate of any
27 injured or deceased employee any amount in excess of (i) the fee

1 established by the compensation court for any such service, (ii)
2 the fee established under section 48-120.04, or (iii) the fee
3 contracted under subdivision (1)(d) of this section.

4 (2)(a) The employee has the right to select a physician
5 who has maintained the employee's medical records prior to an
6 injury and has a documented history of treatment with the employee
7 prior to an injury or a physician who has maintained the medical
8 records of an immediate family member of the employee prior to an
9 injury and has a documented history of treatment with an immediate
10 family member of the employee prior to an injury. For purposes of
11 this subsection, immediate family member means the employee's
12 spouse, children, parents, stepchildren, and stepparents. The
13 employer shall notify the employee following an injury of such
14 right of selection in a form and manner and within a timeframe
15 established by the compensation court. If the employer fails to
16 notify the employee of such right of selection or fails to notify
17 the employee of such right of selection in a form and manner and
18 within a timeframe established by the compensation court, then the
19 employee has the right to select a physician. If the employee
20 fails to exercise such right of selection in a form and manner and
21 within a timeframe established by the compensation court following
22 notice by the employer pursuant to this subsection, then the
23 employer has the right to select the physician. If selection of the
24 initial physician is made by the employee or employer pursuant to
25 this subsection following notice by the employer pursuant to this
26 subsection, the employee or employer shall not change the initial
27 selection of physician made pursuant to this subsection unless such

1 change is agreed to by the employee and employer or is ordered by
2 the compensation court pursuant to subsection (6) of this section.
3 If compensability is denied by the workers' compensation insurer,
4 risk management pool, or self-insured employer, (i) the employee
5 has the right to select a physician and shall not be made to
6 enter a managed care plan and (ii) the employer is liable for
7 medical, surgical, and hospital services subsequently found to be
8 compensable. If the employer has exercised the right to select
9 a physician pursuant to this subsection and if the compensation
10 court subsequently orders reasonable medical services previously
11 refused to be furnished to the employee by the physician selected
12 by the employer, the compensation court shall allow the employee
13 to select another physician to furnish further medical services.
14 If the employee selects a physician located in a community not the
15 home or place of work of the employee and a physician is available
16 in the local community or in a closer community, no travel expenses
17 shall be required to be paid by the employer or his or her workers'
18 compensation insurer.

19 (b) In cases of injury requiring dismemberment or
20 injuries involving major surgical operation, the employee may
21 designate to his or her employer the physician or surgeon to
22 perform the operation.

23 (c) If the injured employee unreasonably refuses or
24 neglects to avail himself or herself of medical or surgical
25 treatment furnished by the employer, except as herein and otherwise
26 provided, the employer is not liable for an aggravation of such
27 injury due to such refusal and neglect and the compensation court

1 or judge thereof may suspend, reduce, or limit the compensation
2 otherwise payable under the Nebraska Workers' Compensation Act.

3 (d) If, due to the nature of the injury or its occurrence
4 away from the employer's place of business, the employee or the
5 employer is unable to select a physician using the procedures
6 provided by this subsection, the selection requirements of this
7 subsection shall not apply as long as the inability to make a
8 selection persists.

9 (e) The physician selected may arrange for any
10 consultation, referral, or extraordinary or other specialized
11 medical services as the nature of the injury requires.

12 (f) The employer is not responsible for medical services
13 furnished or ordered by any physician or other person selected
14 by the employee in disregard of this section. Except as otherwise
15 provided by the Nebraska Workers' Compensation Act, the employer is
16 not liable for medical, surgical, or hospital services or medicines
17 if the employee refuses to allow them to be furnished by the
18 employer.

19 (3) No claim for such medical treatment is valid and
20 enforceable unless, within fourteen days following the first
21 treatment, the physician giving such treatment furnishes the
22 employer a report of such injury and treatment on a form prescribed
23 by the compensation court. The compensation court may excuse the
24 failure to furnish such report within fourteen days when it finds
25 it to be in the interest of justice to do so.

26 (4) All physicians and other providers of medical
27 services attending injured employees shall comply with all the

1 rules and regulations adopted and promulgated by the compensation
2 court and shall make such reports as may be required by it at
3 any time and at such times as required by it upon the condition
4 or treatment of any injured employee or upon any other matters
5 concerning cases in which they are employed. All medical and
6 hospital information relevant to the particular injury shall,
7 on demand, be made available to the employer, the employee,
8 the workers' compensation insurer, and the compensation court.
9 The party requesting such medical and hospital information shall
10 pay the cost thereof. No such relevant information developed in
11 connection with treatment or examination for which compensation is
12 sought shall be considered a privileged communication for purposes
13 of a workers' compensation claim. When a physician or other
14 provider of medical services willfully fails to make any report
15 required of him or her under this section, the compensation court
16 may order the forfeiture of his or her right to all or part of
17 payment due for services rendered in connection with the particular
18 case.

19 (5) Whenever the compensation court deems it necessary,
20 in order to assist it in resolving any issue of medical fact or
21 opinion, it shall cause the employee to be examined by a physician
22 or physicians selected by the compensation court and obtain from
23 such physician or physicians a report upon the condition or matter
24 which is the subject of inquiry. The compensation court may charge
25 the cost of such examination to the workers' compensation insurer.
26 The cost of such examination shall include the payment to the
27 employee of all necessary and reasonable expenses incident to such

1 examination, such as transportation and loss of wages.

2 (6) The compensation court shall have the authority
3 to determine the necessity, character, and sufficiency of any
4 medical services furnished or to be furnished and shall have
5 authority to order a change of physician, hospital, rehabilitation
6 facility, or other medical services when it deems such change is
7 desirable or necessary. Any dispute regarding medical, surgical,
8 or hospital services furnished or to be furnished under this
9 section may be submitted by the parties, the supplier of such
10 service, or the compensation court on its own motion for informal
11 dispute resolution by a staff member of the compensation court or
12 an outside mediator pursuant to section 48-168. In addition,
13 any party or the compensation court on its own motion may
14 submit such a dispute for a medical finding by an independent
15 medical examiner pursuant to section 48-134.01. Issues submitted
16 for informal dispute resolution or for a medical finding by an
17 independent medical examiner may include, but are not limited
18 to, the reasonableness and necessity of any medical treatment
19 previously provided or to be provided to the injured employee. The
20 compensation court may adopt and promulgate rules and regulations
21 regarding informal dispute resolution or the submission of disputes
22 to an independent medical examiner that are considered necessary to
23 effectuate the purposes of this section.

24 (7) For the purpose of this section, physician has the
25 same meaning as in section 48-151.

26 (8) The compensation court shall order the employer to
27 make payment directly to the supplier of any services provided

1 for in this section or reimbursement to anyone who has made any
2 payment to the supplier for services provided in this section. No
3 such supplier or payor may be made or become a party to any action
4 before the compensation court.

5 (9) Notwithstanding any other provision of this section,
6 a workers' compensation insurer, risk management pool, or
7 self-insured employer may contract for medical, surgical, hospital,
8 and rehabilitation services to be provided through a managed care
9 plan certified pursuant to section 48-120.02. Once liability for
10 medical, surgical, and hospital services has been accepted or
11 determined, the employer may require that employees subject to
12 the contract receive medical, surgical, and hospital services in
13 the manner prescribed in the contract, except that an employee
14 may receive services from a physician selected by the employee
15 pursuant to subsection (2) of this section if the physician so
16 selected agrees to refer the employee to the managed care plan
17 for any other treatment that the employee may require and if
18 the physician so selected agrees to comply with all the rules,
19 terms, and conditions of the managed care plan. If compensability
20 is denied by the workers' compensation insurer, risk management
21 pool, or self-insured employer, the employee may leave the managed
22 care plan and the employer is liable for medical, surgical, and
23 hospital services previously provided. The workers' compensation
24 insurer, risk management pool, or self-insured employer shall give
25 notice to employees subject to the contract of eligible service
26 providers and such other information regarding the contract and
27 manner of receiving medical, surgical, and hospital services under

1 the managed care plan as the compensation court may prescribe.

2 Sec. 2. Section 48-120.04, Reissue Revised Statutes of
3 Nebraska, is amended to read:

4 48-120.04 (1) This section applies only to hospitals
5 identified in subdivision (1)(c) of section 48-120.

6 (2) For inpatient discharges on or after January 1, 2008,
7 the Diagnostic Related Group inpatient hospital fee schedule shall
8 be as set forth in this section, except as otherwise provided in
9 subdivision (1)(d) of section 48-120. Adjustments shall be made
10 annually as provided in this section, with such adjustments to
11 become effective each January 1.

12 (3) For inpatient trauma discharges on or after January
13 1, 2012, the Trauma Diagnostic Related Group inpatient hospital fee
14 schedule shall be as set forth in this section, except as otherwise
15 provided in subdivision (1)(d) of section 48-120. Adjustments shall
16 be made annually as provided in this section, with such adjustments
17 to become effective each January 1.

18 ~~(3)~~ (4) For purposes of this section:

19 (a) Current Medicare Factor is derived from the
20 Diagnostic Related Group Prospective Payment System as established
21 by the Centers for Medicare and Medicaid Services under the United
22 States Department of Health and Human Services and means the
23 summation of the following components:

24 (i) Hospital-specific Federal Standardized Amount,
25 including all wage index adjustments and reclassifications;

26 (ii) Hospital-specific Capital Standard Federal Rate,
27 including geographic, outlier, and exception adjustment factors;

1 (iii) Hospital-specific Indirect Medical Education Rate,
2 reflecting a percentage add-on for indirect medical education costs
3 and related capital; and

4 (iv) Hospital-specific Disproportionate Share Hospital
5 Rate, reflecting a percentage add-on for disproportionate share of
6 low-income patient costs and related capital;

7 (b) Current Medicare Weight means the weight assigned
8 to each Medicare Diagnostic Related Group as established by the
9 Centers for Medicare and Medicaid Services under the United States
10 Department of Health and Human Services;

11 (c) Diagnostic Related Group means the Diagnostic Related
12 Group assigned to inpatient hospital services using the public
13 domain classification and methodology system developed for the
14 Centers for Medicare and Medicaid Services under the United States
15 Department of Health and Human Services; and

16 (d) Trauma means a major single-system or multisystem
17 injury requiring immediate medical or surgical intervention or
18 treatment to prevent death or permanent disability;

19 ~~(d)~~ (e) Workers' Compensation Factor means the Current
20 Medicare Factor for each hospital multiplied by one hundred fifty
21 percent except for inpatient hospital trauma services; and-

22 (f) Workers' Compensation Trauma Factor for inpatient
23 hospital trauma services means the Current Medicare Factor for each
24 hospital multiplied by one hundred sixty percent.

25 ~~(4)~~ (5) The Diagnostic Related Group inpatient hospital
26 fee schedule shall include at least thirty-eight of the most
27 frequently utilized Medicare Diagnostic Related Groups for workers'

1 compensation with the goal that the fee schedule covers at least
2 ninety percent of all workers' compensation inpatient hospital
3 claims submitted by hospitals identified in subdivision (1)(c) of
4 section 48-120. Rehabilitation Diagnostic Related Groups shall not
5 be included in the Diagnostic Related Group inpatient hospital
6 fee schedule. Claims for inpatient trauma services shall not be
7 reimbursed under the Diagnostic Related Group inpatient hospital
8 fee schedule established under this section, ~~until January 1, 2012.~~
9 Claims for inpatient trauma services prior to January 1, 2012,
10 shall be reimbursed under the fees established by the compensation
11 court pursuant to subdivision (1)(b) of section 48-120 or as
12 contracted pursuant to subdivision (1)(d) of such section. ~~For~~
13 ~~purposes of this subsection,~~ trauma means a major single-system
14 ~~or multisystem injury requiring immediate medical or surgical~~
15 ~~intervention or treatment to prevent death or permanent disability.~~

16 (6) The Trauma Diagnostic Related Group inpatient
17 hospital fee schedule shall be established by the following
18 methodology:

19 (a) The Trauma Diagnostic Related Group reimbursement
20 amount required under the Nebraska Workers' Compensation Act shall
21 be equal to the Current Medicare Weight multiplied by the Workers'
22 Compensation Trauma Factor for each hospital;

23 (b) The Stop-Loss Threshold amount shall be the
24 Trauma Diagnostic Related Group reimbursement amount calculated
25 in subdivision (6)(a) of this section multiplied by one and
26 one-quarter;

27 (c) For charges over the Stop-Loss Threshold amount

1 of this schedule, the hospital shall be reimbursed the Trauma
2 Diagnostic Related Group reimbursement amount calculated in
3 subdivision (6) (a) of this section plus sixty-five percent of the
4 charges over the Stop-Loss Threshold amount; and

5 (d) For charges less than the Stop-Loss Threshold amount
6 of the schedule, the hospital shall be reimbursed the lower of
7 the hospital's billed charges or the Trauma Diagnostic Related
8 Group reimbursement amount calculated in subdivision (6) (a) of this
9 section.

10 ~~(5)~~ (7) The Diagnostic Related Group inpatient hospital
11 fee schedule shall be established by the following methodology:

12 (a) The Diagnostic Related Group reimbursement amount
13 required under the Nebraska Workers' Compensation Act shall be
14 equal to the Current Medicare Weight multiplied by the Workers'
15 Compensation Factor for each hospital;

16 (b) The Stop-Loss Threshold amount shall be the
17 Diagnostic Related Group reimbursement amount calculated in
18 subdivision ~~(5)~~~~(a)~~ (7) (a) of this section multiplied by two and
19 one-half;

20 (c) For charges over the Stop-Loss Threshold amount of
21 the schedule, the hospital shall be reimbursed the Diagnostic
22 Related Group reimbursement amount calculated in subdivision ~~(5)~~~~(a)~~
23 (7) (a) of this section plus sixty percent of the charges over the
24 Stop-Loss Threshold amount; and

25 (d) For charges less than the Stop-Loss Threshold amount
26 of the schedule, the hospital shall be reimbursed the lower of
27 the hospital's billed charges or the Diagnostic Related Group

1 reimbursement amount calculated in subdivision ~~(5)(a)~~ (7)(a) of
2 this section.

3 ~~(6)~~ (8) For charges for all other stays or services that
4 are not on the Diagnostic Related Group inpatient hospital fee
5 schedule or the Trauma Diagnostic Related Group inpatient hospital
6 fee schedule or are not contracted for under subdivision (1)(d)
7 of section 48-120, the hospital shall be reimbursed under the
8 schedule of fees established by the compensation court pursuant to
9 subdivision (1)(b) of section 48-120.

10 ~~(7)~~ (9) Each hospital shall assign and include a
11 Diagnostic Related Group or a Trauma Diagnostic Related Group
12 on each workers' compensation claim submitted. The workers'
13 compensation insurer, risk management pool, or self-insured
14 employer may audit the Diagnostic Related Group or a Trauma
15 Diagnostic Related Group assignment of the hospital.

16 ~~(8)~~ (10) The chief executive officer of each hospital
17 shall sign and file with the administrator of the compensation
18 court by October 15 of each year, in the form and manner prescribed
19 by the administrator, a sworn statement disclosing the Current
20 Medicare Factor of the hospital in effect on October 1 of such year
21 and each item and amount making up such factor.

22 ~~(9)~~ (11) Each hospital, workers' compensation insurer,
23 risk management pool, and self-insured employer shall report to the
24 administrator of the compensation court by October 15 of each year,
25 in the form and manner prescribed by the administrator, the total
26 number of claims submitted for each Diagnostic Related Group and
27 the Trauma Diagnostic Related Group and the number of times billed

1 charges exceeded the Stop-Loss Threshold amount for each Diagnostic
2 Related Group and the Trauma Diagnostic Related Group.

3 ~~(10)~~ (12) The compensation court may add or subtract
4 Diagnostic Related Groups in striving to achieve the goal of
5 including those Diagnostic Related Groups that encompass at least
6 ninety percent of the inpatient hospital workers' compensation
7 claims submitted by hospitals identified in subdivision (1)(c) of
8 section 48-120. The administrator of the compensation court shall
9 annually make necessary adjustments to comply with the Current
10 Medicare Weights and shall annually adjust the Current Medicare
11 Factor for each hospital based on the annual statement submitted
12 pursuant to subsection ~~(8)~~ (10) of this section.

13 Sec. 3. Original sections 48-120 and 48-120.04, Reissue
14 Revised Statutes of Nebraska, are repealed.